

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

ROSY GIRON DE REYES, *et al.*,

Plaintiff,

v.

WAPLES MOBILE HOME PARK
LIMITED PARTNERSHIP, *et al.*,

Defendants.

Civil No.: 1:16cv563-TSE-TCB

**DEFENDANTS' NON-CONFIDENTIAL MEMORANDUM IN RESPONSE TO
PLAINTIFFS' MOTION TO SEAL (DKT. 100)**

Defendants Waples Mobile Home Park Limited Partnership, Waples Project Limited Partnership, and A. J. Dwoskin & Associates, Inc. (collectively "Defendants"), by counsel, pursuant to Local Civil Rule 5, submit this non-confidential memorandum of points and authorities in response to Plaintiffs' Motion to Seal (Dkt. 100).

INTRODUCTION

Defendants agreed to a Stipulated Protective Order (Dkt. 45) which requires the parties to file information designated as confidential under seal with the Court. Pursuant to the Stipulated Protective Order (Dkt. 45), Defendants designated certain documents as confidential, which Plaintiffs attached to Plaintiffs' Objection to Magistrate Judge's Order Denying Motion to Compel ("Objection") (Dkt. 103) and which Plaintiffs referred to therein.

ARGUMENT

Plaintiffs moved to seal Exhibits 7, 9-14 to Plaintiffs' Objection and references to Exhibits 7, 9-14 in Plaintiffs' Objection (Dkt. 103) because Defendants designated these documents as confidential. Pursuant to the Stipulated Protective Order (Dkt. 45), Defendants

have designated a confidential daily happenings report (Ex. 7), a confidential spreadsheet of “Outstanding Renewals” referring to Defendants’ lease renewal process (Ex. 9), a confidential report documenting Waples Mobile Home Park’s residents (Ex. 10), a confidential screening services activation agreement between Defendants and Yardi (Ex. 11), a confidential email containing instructions for Defendants’ employees on how to process lease renewals Ex. 12), a confidential email between Defendants and Yardi including an attached Yardi report (Ex. 13), and a confidential chart tracking tenants’ compliance with Defendants’ policy and letters sent to tenants regarding lease file audits (Ex. 14).

These documents and the references thereto contain confidential or sensitive business information relating to the confidential business practices of Defendants; a confidential business relationship between Defendants and Yardi; and the private information of Defendants’ tenants. *Ashcraft v. Conoco, Inc.*, 218 F.3d 282 (4th Cir. 2000), held that documents may be sealed pursuant to district court order when the court: (1) provides notice to the public and gives it an opportunity to object to sealing, (2) considers less drastic alternatives, and (3) provides specific findings in support of the decision to seal and the rejection of alternatives. Those requirements are met here.

The common law right to inspect and copy judicial records and documents is “not absolute.” *In re Knight Publ. Co.*, 743 F.2d 231, 235 (4th Cir. 1984) (citing *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 597 98 (1978)). The Court “has supervisory power over its own records and may, in its discretion, seal documents if the public’s right of access is outweighed by competing interests.” *Knight*, 743 F.2d at 235.

First, Plaintiffs have filed a Notice of Motion to be docketed by the Clerk (Dkt. 101). The Notice will provide the public with an opportunity to object to the sealing of the documents in question.

Second, no feasible alternative exists to filing these documents under seal because these documents contain the confidential business practices of Defendants; a confidential business relationship between Defendants and Yardi; and the private information of Defendants' tenants. This Court has recognized that information of this type, due to its highly sensitive nature, merits the sealing of filings. *See, e.g., RegScan, Inc. v. The Bureau of Natl. Affairs, Inc.*, 100 U.S.P.Q.2d 1635 (E.D. Va. 2011) (granting motion to seal information pertaining to commercial trade secrets).

Finally, specific reasons exist to support the rejection of alternatives to sealing the exhibits and portions of the memorandum reflecting confidential information. The United States Supreme Court has recognized that it is proper for courts to "refuse[] to permit their files to serve . . . as sources of business information that might harm a litigant's competitive standing" or for other such improper purposes. *Nixon*, 435 U.S. at 598 (citations omitted). Further, because the at-issue documents involve "private commercial conduct" lacking a substantial relation to any "important governmental or political question," the interest of maintaining the confidentiality of private parties is significant. *RegScan, Inc.* 100 U.S.P.Q.2d at 1637-1638. Due to the confidential nature of the documents designated by Defendants as confidential and confidential portions of the memorandum, permitting the underlying documents and references thereto to be filed on the public docket would not adequately protect Defendants' business interests and the privacy interests of Defendants' tenants.

CONCLUSION

For the aforementioned reasons, Defendants respectfully request that Exhibits 7, 9-14 to Plaintiffs' Objection (Dkt. 103) and references to Exhibits 7, 9-14 within Plaintiffs' Objection (Dkt. 103) be sealed.

Respectfully submitted,

WAPLES MOBILE HOME PARK LIMITED
PARTNERSHIP, WAPLES PROJECT LIMITED
PARTNERSHIP AND
A. J. DWOSKIN & ASSOCIATES, INC.

/s/

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CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of November, 2016, I caused the foregoing to be filed electronically with the Clerk of the Court using CM/ECF, which will then send a notification of such filing to all counsel of record.

/s/

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